MICHIGAN
LAW REVIEW

VOL. XII. JANUARY, 1914 No 3.

DEFECTS IN OUR LEGAL SYSTEM.

THAT the practice of law and the administration of justice are under a fire of popular distrust and criticism of extraordinary intensity requires no proof. A fact of which there is evidence in numerous contemporary books, in almost every magazine, in the daily papers, in the remarks, or the questions, or it may be in the sneers, of one's friends, requires no further demonstration. The only questions of importance to be answered are to what extent this criticism and this distrust are well founded, what are the remedies for such defects as exist, and how and by whom should they be applied? Shall lawyers allow their just indignation at such of these criticisms as grow out of ignorance and prejudice to blind them to those that are true, or to steel them into an attitude of indifference to, or of assumed contempt for, this entire popular outcry? This would indeed be a course of folly, not to say of professional suicide, one which would inevitably result in the laying of alien and unskilled hands upon the temple of justice, in crude and ignorant efforts to repair the breaches in the temple walls and to remodel them to meet the new necessities of changed times and conditions. That this is no fancied danger we have had already convincing evidence. Our delay as a profession in correcting defects in our legal institutions, and in adjusting them to the needs of contemporary society, has afforded the opportunity, if indeed it has not actually invited from outsiders, countless suggestions of alleged reforms and some well organized and powerful efforts to accomplish them. These have ranged from the foolish and sometimes dangerous nostrums of ignorant quacks and demagogues to the well-meant proposals of serious minded and patriotic men. While some of these plans are utterly impracticable, or ineffectual or positively harmful, others contain suggestions of merit, which deserve the serious and respectful attention of the Bar.

But some of our profession are saying that lawyers have always

been the objects of criticism, that the present is but a flurry of a little greater than ordinary intensity, that the criticism is in the main unfounded, and that with perhaps a few minor changes in procedure, we can afford to "stand pat" and let the bluster pass over our heads. This, I fear, would be ostrich-like strategy exposing our plumage to the rude hands of ignorant vandals.

It is true that lawyers have never been and probably never will be exempt from attack. Literature from its very beginning has abounded in quip and quirk, in sarcasm and vituperation at the expense of our profession. In some primitive societies the profession of law was prohibited. Later Aristophanes satirized lawyers most bitterly, and the ironies of Shakespeare, Dickens and many other English authors are familiar to every one. All Utopias exclude lawyers as a matter of first principle. And notwithstanding the prestige and glory, which a little later they were destined to receive for their invaluable contributions to the formation and early development of our present form of government, lawyers were feared and hated in the heroic period of our history. Thus the citizens of Braintree, Mass., in 1786, in town meeting solemnly resolved that:

> "We humbly request that there may be such laws compiled as may crush or at least put a proper check or restraint on that order of Gentlemen denominated Lawyers, the completion of whose modern conduct appears to us to tend rather to the destruction than the preservation of the town."[1]

And the legislative representatives of Dedham were instructed as follows:

> "We are not inattentative to the almost universally prevailing complaints against the practice of the order of lawyers, and many of us now sensibly feel the effects of their unreasonable and extravagant exactions, we think their practise pernicious and their mode unconstitutional. You will therefore endeavor that such regulations be introduced into our Courts of Law, and that such restraints be laid on the order of lawyers as that we may have recourse to the Laws and find our security and not our ruin in them. If upon a fair discussion and mature deliberation such a measure should appear impracticable, you are to endeavor that the order of lawyers be totally abolished; an alternative preferable to their continuing in their present mode."[2]

[1] Warren, History of the American Bar, 215.
[2] Warren, History of the American Bar, 215.

Prof. J. B. McMaster says:

> "While, therefore, everyone else was idle, the lawyers were busy; and as they always exacted a retainer, and were sure to obtain their fees, grew rich fast. Such prosperity soon marked them as fit subjects for the discontented to vent their anger on. They were denounced as banditti, as bloodsuckers, as pickpockets, as windbags, as smooth-tongued rogues. Those who having no cases had little cause to complain, murmured that it was a gross outrage to tax them to pay for the sittings of courts into which they had never brought and never would bring an action."[3]

And during at least two other periods in our history, there seem to have been unusual outbreaks of criticism upon the law and the courts. Without attempting here to analyze the causes of popular distrust of lawyers in other lands, it is sufficient to say now that there is not great similarity between the earlier attacks upon the administration of law in our country, and the charges which are being preferred against our juristic system at the present time.

Thus the post-revolutionary period of antagonism to lawyers was due to a lingering hatred of all things English, and lawyers were trained in the traditions and practiced the principles of the English common law. Moreover, many of them were loyalists. Much of their business at this period consisted of the enforcement of contracts, mortgage foreclosures, and other suits upon debts.[4] All this added to the irritation felt by a people among whom were many whose spirit of independence and whose theories of individualism approached lawlessness and who fretted under legal restraints. A few decades later there was another outburst of hostility, but it was produced mainly by the denunciation by Jackson and his followers of the federal and nationalistic character of the decisions of the Supreme Court under the leadership of John Marshall. Again, just before the outbreak of the Civil War, the enforcement by the Courts of the Fugitive Slave Law, the Dred Scott decision, and other decisions involving questions which were then subjects of partisan controversy, brought the Courts, at least, into disfavor with a large portion of our people. In both of these later periods the seeds of discontent lay in political conditions, and the hostility to lawyers and law was largely political. In all three of these periods the special causes of antagonism were ephemeral in nature, much more so than those conditions and tendencies which are producing the present onslaught.

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[3] McMaster, 1. History of the People of the United States, 302.

[4] Warren, History of the American Bar, 214.

It is true that in the earlier periods as now criticisms of the courts and its officers were based in part upon some characteristics of law and some effects of its administration which not even the intelligent and thoughtful layman always understands, but which are inseparable and always must be, from any general system of law devised by human minds. Uniformity and certainty in law, which all lawyers and many serious minded laymen understand to be absolutely vital not only to successful and legitimate commerce and industry, but to the conduct of human affairs generally, but which nevertheless inevitably work hardships and injustice in individual cases; the restraints and restrictions and the conformities which a legal system must always impose; the refinements and technicalities which must, in some measure, ever exist in the jurisprudence of a complex and highly developed civilization; the duties and obligations of advocacy, incomprehensible to many high-minded laymen; these and many other characteristics of any workable legal system have always produced and to some extent always will produce suspicions and criticism of our profession. A system of ideal law could not possibly be devised, much less applied to our very imperfect human race. An ideal system of law, which is a very different thing, conceivably might exist; but even under it we could not hope wholly to escape strictures growing out of the general causes above referred to.

While, then, among the charges to which the Bar is now subjected, there are many to which it had long ago become accustomed, new grounds of complaint are also alleged, or at least a new and very different emphasis is given, so that the situation we meet is essentially a new one. The fact that the American Bar has survived previous assaults with unimpaired strength and prestige is by no means conclusive that it will emerge as fortunately from its present unpopularity unless it sets itself vigorously and thoughtfully at work to remove the causes. Earlier attacks upon the Bar finally wore themselves out, because the causes of their especial intensity, being ephemeral, disappeared of themselves; but for parallels to the present situation we must go back to experiences of our English brethren during certain critical periods in the history of English law. As Professor Roscoe Pound has pointed out,[5] in the sixteenth and seventeenth centuries the common law had become stratified and rigid. Then as now the conception of justice had become too nearly exclusively the legalistic one. The judgments of the Courts too often affronted the common sense of fairness and of justice. Then, as now, there came a rising protest against a rigid and artificial test

[5] 18 American Journal of Sociology, 333 et seq.

of justice. The protest then was against the lack of influence of the conscience, and the adherence to arbitrary and purely legalistic rules; now the alarm is struck because of an alleged failure of our courts and the Bar to perceive and be guided by the needs of society as such, and a too persistent clinging to the individualistic ideals of the eighteenth century, a period when the individual might safely be accorded more rights, less restricted privileges in the sparser populations, and the lesser social solidarity of those days. The danger of that day was met by a more or less forcible removal of the causes of complaint. The failure of the law courts to satisfy the national sense of justice resulted in an enormous expansion of the jurisdiction of equity, and an infusion of its principles into the common law, which not only materially affected the doctrines of the common law, but still more radically changed its attitude and spirit. Thus the danger was met by aid, forced upon the common law it is true, but fortunately aid furnished by lawyers and legal scholars, even though they were trained in a different juristic system. A century or so later the tremendous expansion of England's commerce found English courts and lawyers unable or unwilling to meet the necessities of an almost new development of the national resources and energy, and again the situation was saved by aid from without, by the grudging and reluctant absorption of the Law Merchant.

Is it not probable that the present unrest indicates a recurrence of these older phenomena, and that now as then, we must save the day, if it is to be saved, not by making a few reforms in procedure which ought to have been made long ago, or by puttering with the details of our judicial machinery, but by a frank and scientific consideration of the needs and the spirit of our day, and the absorption into our law of the established and proved principles of contemporary political economy, political and social science?

Much of the criticism of law and its administration is utterly unreasonable and unreasoning. Ignorance, prejudice, stupid or artful demagogues, and the weaknesses of the people themselves are responsible for many complaints. And it is the duty of the Bar, which they cannot too firmly or too often perform, to point out the error, the falsity of such indictments and to resist with the weapons of knowledge and reason the adoption of meretricious or unscientific measures proposed by the uninformed, or by wily demagogues seeking to ride into popularity and public office by appealing to popular prejudice or passion.

The prevalent criticisms of our juristic system may, for convenience sake, be traced to the following origins: (1) defects in procedure, in which I would include imperfections in the law relat-

ing to pleading, practice and evidence, and their actual administration by our courts; (2) imperfect and meager organization of our courts; (3) lack of adequate training and inefficiency of the Bar, considered collectively; (4) a certain sentimentality and a lawlessness on the part of great masses of our people, due to our political origin, our early history, and perhaps to our national temperament, if indeed we have one. A brief consideration of some of these may be helpful in the search for true remedies.

1. I shall make but passing reference to the subject of procedure, but we are all agreed, that as to the country as a whole, there is urgent need of greater simplicity and directness in pleading and practice, and an elimination of all unnecessary technicalities and delays, which at present are often the instruments of injustice and oppression. We should not hesitate to make our procedure conform to our changing conditions and needs in the effort to make justice speedy, certain and available to all. The lawyer, uninformed as to the history of his science, and thinking of it as rigid dogma, emanating from some mysterious source, unresponsive to the necessarily changing needs of society, a science which he practices as a trade, is prone to make a fetish of that particular form of procedure, to which he happened to have been apprenticed, and beyond which he has not permitted his vision or his imagination to penetrate. The law, substantive and procedural, is no sacred relic, the exclusive product of other ages or of mysterious and immutable principles, which would shrivel at the touch of human hands, or wither in the fresh air of reasonable inquiry by contemporary society. Rather it is a living, pulsating thing, the product of human conduct in a constantly changing environment which requires nourishing, and pruning as well, at the hands of succeeding generations. Procedure in most of our states, except as to some fundamental features common to nearly all juristic schemes, possesses little that has even the venerability of mere age. Yet in many of our jurisdictions, a contrary, erroneous view, or other cause is preserving a procedure whose archaic form and spirit will soon place it among the great and mysterious wonders of the world. Fortunately former President Taft, Senator Root, and many other public spirited leaders in our profession and many Bar Associations are leading the way in demanding reform in this matter.

2. We have paid little attention in this country to the vitally important matter of the organization of our Courts into an integral system, despite the instructive and brilliantly successful experiments of Great Britain during the last forty years. And yet we are surprised at the great expense of maintaining our courts, their inability

promptly to dispose of the mass of litigation which at present is clogging their machinery, the numerous conflicts between Courts of concurrent jurisdiction, and their lack of coherent, efficient administration as a system. This is no fault of our judges personally, nor do I mean to accuse our individual courts of inefficiency. Professor Pound has clearly delineated the characteristic judicial organization of this country and the unfortunate results of its many imperfections.[6] These may be summarized as follows: We have ordinarily at the bottom of our system, justice of the peace or magistrate's courts with jurisdiction in petty civil and criminal cases, and authority to bind over persons deemed guilty of the graver criminal offenses to a court of general jurisdiction. The most glaring defect in these courts is that they are too often presided over by laymen, who not infrequently are besides persons so lacking in character and general ability as wholly to fail to command the confidence of litigants and attorneys. This may be the reason why practically every case tried by these courts may be appealed to a superior court or courts, there to be tried *de novo*. This right alleviates one vice in the system at least for those who can afford the expense of an appeal, but in the majority of cases it imposes wholly unnecessary delay, expense and irritation upon litigants. The second rung in our judicial ladder, if indeed by any stretch of imagination our system can be considered as unified as a good dependable ladder, is usually made up of probate courts. The same objections, though in less degree, may be charged against these courts as against the justice of the peace tribunals.

We have next *nisi prius,* or trial courts of first instance, with general jurisdiction in civil and criminal causes, and again—the practically unlimited possibility of appeal to a higher court. There may be separate criminal, common law, chancery and other courts in this class, or the same result may be reached by corresponding branches or divisions of this general court. Finally there is the Supreme Court, with the major part of its jurisdiction purely appellate. Considering the system in its entirety these criticisms are suggested. There is no real co-ordination of the many parts of the scheme, no unity. Rather we find a series of courts, related it is true, but with no supervisory head to give coherence and unity to the activities of the component parts. The Supreme Court by its decisions establishes the law, binding on all inferior courts, but in the administration of the business, in procedure and in application of law to the cases coming before them, the Supreme Court in many

[6] Address before the Law Association of Philadelphia, Jan. 31, 1913.

states has very little power. It may, if the parties can afford to appeal, correct errors made below, but in many instances only after a series of expensive and time-consuming appeals, and often only after some measure of irreparable harm has been done.

Even in courts of the same grade and jurisdiction there is no integral relation. On the contrary the several Circuit Courts for most purposes may be likened to a series of separate compartments, and they in turn are divided into sections and then cross-sectioned, and woe betide the litigant who gets his case into the wrong compartment. Thus we are affronted with conflicts of courts of concurrent jurisdiction sitting even in the same city. The litigant who gets into common law when he should have gone into equity must back out as best he can and begin all over, and even this poor consolation is sometimes denied him by lack of funds or by a statute of limitations. Because of a lack of central supervisory authority the Circuit Courts in some counties may be submerged in a mass of litigation, while judges and their aides are idle in other counties for sheer lack of business. Finally as in Michigan and some other states we over-burden our Supreme Court by compelling it to take jurisdiction of almost any controversy no matter how small the amount involved and whether or not any right or principle at all is in issue. When we compel eight Supreme Court justices to hear arguments, read briefs and records in a litigation involving only the title to a hen-turkey something is wrong. I know it will be said the poor man as well as the rich is entitled to have the opinions of our highest tribunal upon his case; but this is a superficial and specious argument. It is the poor man who for obvious reasons is the most immediate sufferer from this situation. I know it will also be said that to raise the jurisdictional amount for the Supreme Court will destroy business and injure lawyers. Even if this were true, it is an unworthy consideration, for the interests of litigants, the welfare and interests of the state in avoiding litigiousness, in keeping down the expense of maintaining our courts, and above all in enabling its court of last resort to adequately study and rightly decide the cases that come before it, are of paramount importance.

But I seriously doubt the validity of the premise upon which even the unworthy argument of the selfish interest of the Bar proceeds. It is the mass of defects in and reproaches upon our system, which we have been considering, that is driving business men and others away from Courts and lawyers, that is leading people to compromise or to buy peace rather than settle even their genuine and substantial disputes by law, that is influencing those who are unable to keep out of the courts to confide their

interests and the conduct of controversies to trust companies, insurance and fidelity companies and other corporations. It is this sort of thing among other causes that is influencing the public, the state, to entrust more and more of its business to administrative commissions, like railway and warehouse boards, and public utilities commissions, rather than submit even its controversies to the care of lawyers and the arbitrament of law courts. In fact there is some measure of truth in the declaration recently made by a lawyer of standing in an article somewhat excitedly entitled "The Passing of the Legal Profession," that business corporations organized to practice law for profit, and government commissions are driving lawyers out of business.[7] These matters are all well known to our profession, and yet we are doing little about it. The pressure for improvement is coming altogether too much from outside, too little from our own ranks. Even if we were actuated by nothing higher than selfish motives, is it not apparent that it is high time we were setting ourselves seriously and vigorously to the task of setting in order our house, which we like to call the Temple of Justice.

So far as we in America have made effort, worthy of mention, to remove the clogging mass of delayed litigation in our courts, it has been by such ineffective methods as increasing the number of judges, and by organizing new courts for special purposes. In fact one of the striking phenomena in the contemporary history of our judiciary is the establishment of a large number of special courts and proposals to establish many others. The Juvenile Courts, Domestic Relations Courts, the Commerce Court, the many quasi-judicial bodies already referred to, and the proposed Midnight Courts, Sunrise Courts, are all symptoms of disease, and indicative of efforts to cure it. The theory of specialized courts is in accord with the general principle of division of labor, and is doubtless sound, but too often the realization of its possible benefits is partially frustrated by too great segregation, and by the foolish plan of rotation among the judges, a scheme which tends to prevent them from becoming expert.[8]

There is not space within the limits of a general paper to suggest in detail a plan of court organization, but the general principles upon which a system vastly superior to our own may be constructed, may be derived by a study of the modern English judicature act. We should have one single court, whose administrative head should be

[7] *22* Yale Law Journal, 590.

[8] For an effective discussion of some of the evils of our prevailing type of court organization, see a series of articles by Geo. A. Alger, of the New York Bar, beginning in the October, 1913, number of World's Work, vol. *26*, p. 653.

a judicial officer with power to classify, distribute and assign the business of the court to the appropriate divisions or branches thereof, to assign the judges to the various divisions and localities, and as occasion may arise to re-assign them to meet the changing exigencies of the more or less regular ebb and flow of litigation, or the extraordinary and temporary needs caused by illness, or other accident. In short, this Chief Justice, if such he is called, should be given power to effectively control and utilize the entire judicial machinery of the state, and he should be made responsible for doing so. The court should probably have three main divisions; (1) a court of limited jurisdiction, civil and criminal, somewhat like the Municipal Court of Chicago; (2) a superior court of first instance with general jurisdiction, and (3) a Supreme Court which should be not only the court of last resort, but in which should sit, it seems to me, the supervising officer above referred to. The Municipal Court of Chicago affords convincing proof that such a scheme is well suited to the conditions in America.

The six annual reports of this court which have now been published are worthy of careful study, and it is perhaps not too much to say that they show it to be the most remarkable court in the United States. Because it was created largely to replace the old and scandalous system of justice of the peace courts which had long been a curse to Chicago, it has been supposed by some to be a merely petty tribunal. This, however, is far from being the fact.

The court has general jurisdiction of all cases in which the amount of plaintiff's claim does not exceed $1,000 and also a general magistrate's jurisdiction. But in addition it has unlimited jurisdiction of actions upon contract and in several of the important tort actions, including suits against carriers of passengers, to recover damages for personal injuries. Its jurisdiction to a large extent is concurrent with that of the circuit and superior courts. But its superior efficiency in many respects and the greater expedition in the dispatch of business have resulted in the preference by a large percentage of the suitors and their attorneys for the municipal as compared with the older and in some senses superior courts.

The most noteworthy features of the court are: (1) the centering of supervisory powers and correlative responsibility for the administration of the court and all branches in a chief justice who has power not only to assign and reassign as occasion requires judges to the different courts, thus making the best out of the peculiar abilities of the respective judges for certain types of business and putting those who are not well adapted to the performance of judicial functions where they can do least harm; (2) the fact that the court is not

impeded in its operations by a mass of statutory rules relating to practice and procedure, as it has but thirty-four standing rules framed and issued by the court itself, rules which are simple, direct and perspicuous; (3) the adoption of a system of simple pleadings resulting in the avoidance of the evils of over-technical pleading, and in the great expedition of the business of the court, thus saving time, expense and worry to litigants and to the bar; (4) the establishment by the chief justice of branches of the court and the distribution among them of that part of the business of the court which is of a special or peculiar nature. The following branches have already been created: Domestic Relations Court; a court for the trial of persons charged with violations of city ordinances; the Morals Court, the title of which sufficiently explains the nature of the court's jurisdiction, and which has already proved itself a great blessing to the City of Chicago; the Speeders' Court, in which are tried persons charged with violating the speed limit for automobiles, the improper placing or adjustment of lights, improper use of gasoline and other offenses of like nature; a branch in which are tried cases involving laws relating to child-labor, compulsory education, truancy and state laws or city ordinances for the protection of the health and safety of employees in factories and other establishments has also been created. All of this has proved of great value in giving to the judges assigned to these special types of work expert knowledge of the matters within their jurisdiction, in expediting business and in bringing to trial promptly persons charged with the types of offenses indicated. (5) There has been adopted a system of abbreviated records which it is said has resulted in the saving of upwards of $200,000 a year. (6) A bureau of information has been established and here litigants may learn how, when, and in what branch they should begin their actions or what steps they should take to defend if they are defendants. (7) Perhaps most important of all, there are no air-tight partitions between the various branches of the court. If a plaintiff files his suit in the wrong court or on the wrong theory the mistake can be corrected without material loss of time or expense. (8) The judges of the court have been guided by the belief that it is their duty to administer justice and not merely to apply hard and fast legal rules, and they have freely resorted to all social agencies which might contribute to the desired result. Thus in the sixth annual report we find public acknowledgment by the judges of their indebtedness to the Juvenile Protective Association, the Bureau of Personal Service, the Catholic Woman's League, the United Charities, the Legal Aid Society and the Chicago Law and Order League and others. The aid of fraternal and other social organizations has

been often invoked for the purpose of "bracing up" and otherwise helping members of such orders charged with violations of the law but who were paroled under suspended sentence.

It has taken a great deal more than a good law to develop this splendid court. Chief Justice Harry Olson, Judge W. N. Gemmill and others who have sat in this court have shown extraordinary wisdom, resourcefulness and a progressive but sane and intelligent attitude toward the question of social justice, and as a result of their painstaking and skilful work the Municipal Court of Chicago has already become a model for many others in different parts of the country.

The annual reports show the steady and remarkable growth of confidence of the people of Chicago in this court. The amount of money judgments in civil suits has grown from $1,501,460 in 1906-7 to $4,040,544 in 1911-12, the last fiscal year for which there is a report. In 1911-12 the total number of suits of all kinds filed in the Municipal Court was 159,900, while 162,608 causes were finally disposed of. The cost in judges' salaries per case was only $1.10, while that in clerks' salaries was $1.32 and in bailiffs' salaries $1.12.[9] This would suggest that in the matter of employment of clerks and bailiffs the court may not be wholly exempt from outstanding political influences, but the dispatch of business by the judges of this court and the low cost at which this enormous mass of litigation was disposed of speaks eloquently not only for the efficiency of the system but for the conscientious and intelligent discharge of their business by the judges under the brilliant leadership of the Chief Justice, Harry Olson.

The Chicago court which has been a model much referred to, is unfortunately menaced in a manner and from a quarter most discouraging to believers in unlimited democracy as applied to judicial officers. The court has, of course, experienced that loss in efficiency in its personnel which the exigencies of politics have inflicted in varying degrees upon almost all American tribunals. But this evil has been intensified in the Chicago court by the unfortunate working of the primary elections, by which candidates for the Bench are chosen. Apparently, experience, efficiency, learning in the law have counted for little with the Chicago electorate in its choices for this

[9] The data and other facts referred to herein have been taken from the Sixth Annual Report of the Municipal Court of Chicago, published in December, 1913. See especially pp. 78 et seq. The entire report is replete with information. The bare statement of what has been accomplished in the Domestic Relations Court and other special branches is a revelation of what can be accomplished by a court constructed, adapted and run to meet the requirements of contemporary society.

court. On the contrary, we find that every race, every nationality in that great international "melting-pot," every sect, every fraternal organization, every political faction and every locality is likely to put forward its "favorite son," with very little regard to his qualifications for impartial and effective service upon the Bench. These are the considerations that have counted heavily against many good candidates and in favor of some poor ones. But a reorganization of our courts on the basis of a plan combining the best features of the English system and of the Chicago court, with such other provisions as may be locally desirable, would do much to correct many so-called defects of procedure, and would result in a more prompt, accurate and efficient administration of justice. Lawyers, courts and the law would be greatly helped to regain their rightful hold upon the confidence and respect of the people.

3. The lack of adequate training of the Bar, the third cause of the defects in our legal system, is the most fundamental of all, though it has received little popular attention because it is less apparent to superficial observation, and because the removal of this cause involves the adoption of some remedies which run counter to certain false but rapidly disappearing prejudices, mistakenly associated with the splendid principles of true democracy and true Americanism.

We in America have notably failed to insist upon the possession of adequate general training, legal learning and sound character as a necessary condition of admission to the Bar. As compared with the legal profession in England, Germany and France, and with the medical profession in our own country, our requirements of qualification for the right to practice are conspicuously low. This is due principally to the conditions under which the profession of law originated and developed in the United States, in part to the survival of certain early prejudices, clustering around the erroneous assumption that any American, with or without training, can successfully do anything, and that to require proof of adequate education, general and legal, and of ability to apply one's learning to legal problems, involves closing the door of opportunity, and is therefore undemocratic and un-American. One hesitates to discuss the problem involved in these prejudices, because his spirit and motives, and indeed what he plainly says about it, almost surely will be misunderstood by some people and misconstrued by others not wholly disinterested. And the fact that many lawyers have achieved not only eminence at the Bar and distinction in public life, but also profound legal learning and insight, with little or no formal education, is sure to be, as it always has been, urged as proof that education is not necessary. The case of Abraham Lincoln, who laid the foundation of a distin-

guished legal career in the bare loft of a rude cabin, where, after his day's work, by the flickering light of a tallow candle or a pine knot, he pored over borrowed copies of Blackstone and a few elementary treatises on English Law, is cited as proof positive that school or college training is superfluous. This is a very shallow and partial view of the matter. We all glory in the career of Abraham Lincoln and the many other self-trained lawyers who have honored the Bar and served their country with distinction. No one with any understanding of American life could seriously propose any standards or rules of admission to the Bar which could possibly deny to an Abraham Lincoln his opportunity. Indeed the complete refutation of this whole argument lies in the simple fact that no rule or set of rules could bind an Abraham Lincoln, for he would find a way to meet all of them. Any strong man, even though he wholly lack the genius of Lincoln, can comply in these days with any standard seriously proposed for admission to the Bar. There is no danger in this country of an aristocratic or exclusive Bar. Such an organization would not be tolerated; it could not survive in free American air. The truth is that at present in most of the states it is easily possible for men of poor ability to go to the bar without having undergone any serious and sustained exertion, much less any sacrifice, to qualify themselves to begin the practice of law with even a respectable equipment of general training or professional attainment.

In medicine, on the other hand, in all but one state, the law or the rules of authorized boards provide that no one may be examined for a license to practice unless he is a graduate of an approved medical school; and an approved medical school is defined as one with adequate and specified laboratory and library facilities, a competent faculty, a four year course, and in some states as requiring some college work for admission to the school. No state in the country makes anything like equivalent requirements for admission to the Bar. As a result we have, as every candid man must admit, large numbers of ignorant, untrained, inefficient lawyers everywhere. The Bar is over-crowded, with a resultant cut-throat competition, which cheapens professional service, destroys *esprit de corps,* and subjects all but the stronger members of the Bar to cruel temptation to fall into undignified and even more censurable methods of getting a business and a livelihood. This "moral overstrain" as it has been called, is responsible for many unethical practices, and many a lawyer's down-fall. Despite the many brilliant men at the top of our profession, and the sound and effective men who make up its working majority, the fact that the lower ranks are largely filled up with half-baked men of small ability cannot be successfully

denied. This unquestionably makes the Bar less efficient than it should be, and among the results are slovenly and misleading legal advice to the very class of clients who can least afford to make mistakes, unnecessary litigation growing out of legal blunders, and frequent miscarriages of justice. On the public side, as lawyers constitute a large proportion of our legislative and administrative officers, and practically all of our judicial officers, the making, interpretation, application and enforcement of our law suffers to the manifest injury of the entire body politic. And this is all utterly needless, and productive of good to no one, perhaps least of all to the unqualified lawyer who should have been excluded from our ranks, if he were unwilling properly to prepare himself for his high calling.

It has been a favorite cry of the apologists for an easy and painless admission to the Bar of all who may apply, that society can be depended upon to weed out the unfit in the course of time. This is measurably true, but who can calculate the frightful cost to individuals, the economic waste to the community? How is this unintelligent process accomplished? By permitting the inadequately qualified barrister to hold himself out as a duly admitted member of a high profession, an officer of the courts, a minister of law, and thus to begin his experiments upon individuals and society. And what finally eliminates him from a service for which he is unfit is the contemplation by an injured and suffering community of his record of incompetency, of blunders, of clients perhaps irreparably injured in property, or reputation. Nothing could be more disastrous, more cruel to the unfortunate lawyer himself. For lack of intelligent supervision by the State he has been allowed to spend time and money in getting a sufficient smattering of law to admit him to the Bar, and there he has spent more precious years of his life and perhaps more money in the vain effort to establish himself as a lawyer, and too often he then turns hopelessly to other occupations for which perhaps he might have fitted himself worthily, a defeated, broken man. The loss to society is perhaps more difficult to trace, but in the aggregate it is enormous.

It is no answer to a plea for higher qualifications for the Bar to point out that a very large percentage of successful lawyers during our early history, and to a small extent even now, have had only meager and informal training. In the very beginning of our profession in America, the leaders of the Bar were for the most part men of the highest training, for which many of them went to English Universities, and the profession as a whole for a generation or more after the Revolution was in fact as in name a learned profession. But then followed a long period as our population spread westward,

when the exigencies of the national life, and the difficulty in the newer country of getting an education, general or legal, brought about a decline. Now in a community in which very few are well educated, obviously the entire practice must be adjusted to the attainments and standards of the many, and therefore the relatively high rank and the success of an individual lawyer in such a society affords no argument that in a succeeding generation a lawyer of equal ability and no greater training could attain success, in the more complex and difficult situation and with the more highly trained courts and competing lawyers of that day. That is the point. Our successors must meet a very different situation from that which we have faced. Our entire civilization is more complex, more difficult, and it is growing still more so. The welfare of our professional successors and that of the state demands that we equip them for the struggle with a more thorough and more scientific training than we ourselves had. We must not be sensitive about this. We are in our richer generation, able to do more for our successors than our predecessors could do for us.

Now such advances in the requirements for admission to the Bar as are being urged by those who are thinking most seriously about this problem are entirely reasonable and are within the reach of any American who has sufficient ability, energy and character to creditably perform the functions of a lawyer. The best law schools in the country, with only one or two exceptions, are now requiring one or more years of college work before the student may begin the study of law. The results have amply justified this requirement. It has produced increased efficiency and scholarship, a higher type of class room discussion, a better grasp by all students of legal principles. But it is not proposed to demand college work *for admission to the Bar.* We should, however, require a high school training or its equivalent, and the completion of a course in a law school, properly manned and equipped, with a three years course, to which the student must give his preponderant energy and most of his time. In these days of public schools within easy reach of everyone, with colleges and universities dotting the land, with the numerous opportunities for students to earn money in term time as well as in vacation, with scholarships and loan funds available for many, above all in a country prosperous beyond any in all previous history, there is no excuse for any worthy American boy, if he wants to become a lawyer, failing to get at least this minimum of training suggested for admission to the Bar. We need not worry about the few exceptional cases of those who through accident or misfortune find it difficult to get that far. Almost every rule of administration should provide

for the exceptional treatment of the really exceptional cases. But rules must be made for the many and not for the few.

There is now practically no dissent to the proposition that every law student should first have a high school training. The time has now come, in the judgment of those best qualified to speak, when we should insist, as have our medical friends in their field, that candidates for admission to the Bar must complete a course in a reputable Law School, and that term should be adequately defined in the statute or the rule of court making the requirement. The law office no longer affords a satisfactory means of acquiring a legal education. The conditions have so changed and the exactions upon the practicing lawyer are now so severe that it is impossible for him to give to the student the time and careful thought which legal education now demands. Moreover, the advances in the science and art of teaching law made by the better law schools during the last twenty or thirty years have revolutionized legal education, and the gap that exists between the best that the law office can do and that which the better law schools actually are doing is so great that the State is no longer justified in accepting the former as an equivalent for the latter, or as qualifying a man (exceptional cases excluded) for admission to the Bar. There is still a great field in legal training for the law office, a field which the law school can never fully and perfectly occupy, but that field consists of an apprenticeship in which the student, who has acquired his training in the theory of law, and who has had his powers of legal reasoning developed by the intensive methods now employed by the law school, is by the law office trained to apply what he has acquired to the actual work of practice. Ultimately, I hope we shall require, as they now do in Germany and some other countries, a period of apprenticeship in law offices, during which, however, the student may earn some money, before he is permitted to practice independently. But this experience should never be in lieu of the law school training. The two are entirely distinct and both are necessary under modern conditions to the production of a lawyer capable of beginning practice independently without acquiring his education at the expense of clients.

Moreover, law cannot be most effectively taught by correspondence schools or in those diploma mills mistakenly called law schools, run with a sole eye to profit and demanding only those remnants of the student's time and energy left after a full day's work in other fields. I do not by this mean to criticise proprietary schools or night schools as a class. While they necessarily labor under disadvantage as compared with the better law schools, many of them are conscientiously and intelligently conducted. I am speaking only of those

schools in which everything is subordinated to the making of money even at the expense of flooding the country with half-baked and unqualified lawyers.

The best interests of all our profession and of the administration of justice require, in my opinion, a close co-operation between the Bar Associations, the Boards of Law Examiners and the courts which they represent, and the Law Schools, and signs are not lacking that we have entered upon a period of such co-operation. The advancement of the welfare of the State and the great cause of social justice, new phases of which are appearing daily in our constantly changing society, all demand that we make specific advances in the production of a better trained and more efficient Bar. Important as are the functions of our medical friends, ours, it seems to me, are of still greater vital interest to individuals and to society, and if medical men are justified, as events have already proved they are, in raising the standards of admission to their profession, certainly we are justified in making equal advances. We are in this respect the trustees of a great and comprehensive social interest.

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The above article is based upon a paper read at the 1913 meeting of the Michigan State Bar Association.